



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable C. H. Cavness
State Auditor
Capitol Building
Austin, Texas

Dear Sir:

Opinion No. 0-5802
Re: May the Department of Education collect from the School Districts filing supplemental census reports a fee of 30¢ for each scholastic included on such supplemental census reports?

Must these funds be deposited in the State Treasury?

We acknowledge receipt of your letter of recent date reading as follows:

"Article 2816a, P. C. S., provides for a supplemental scholastic census in connection with the apportionment of the State's Public School Funds (Acts 1941, 47th Leg., p. 152, ch. 11).

"In connection with our current audit of the accounts and records of the State Department of Education, we find that the Department has interpreted "at district expense" in this law as meaning that the School Districts filing these supplemental census reports should also pay certain expenses of the State Department in that connection. The Districts naturally have to pay their own local expense in taking the supplemental census in the same manner that they have to stand the expense of the original census. The Department of Education pays all of the State expenses in connection with checking the regular census rolls, etc., but is now and has been collecting from the School Districts filing

these supplemental census reports, a fee of 30¢ (35¢ at first) for each scholastic included on such supplemental census reports.

"We are not sure as to the legality of the collecting of these fees by the Department of Education and shall greatly appreciate a ruling from you on the matter. Is it legal for the Department to collect any such fee under the provisions of the Article to which reference is made above, or under any other Article in the Statutes?

"A second question arises in this connection. The funds collected as above described are being deposited in an Austin Bank with disbursements from them being made in the form of checks having only the signature of an employee of the Department of Education. In other words, this money is being handled as "Local Fund" of that Department, which may be illegal under the Statutes that make provision for the handling of State Funds through the State Treasury. Please advise us as to this-should these funds (whether or not legally collected) be deposited in the State Treasury with payments therefrom made on warrants drawn against the Treasurer, and subject to the same restrictions as other State Funds in their expenditures?

"Your prompt reply to these questions will be greatly appreciated."

Article 2816a R. C. S. reads as follows:

"Section 1. It is hereby provided that in cases of unusual increase of scholastic population of any school district caused by the location therein or adjacent thereto of camps, reservations, building or dam projects sponsored by Federal Government or State Government ownership and whose creation results in an unusual increase in scholastic

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population in a school district upon the certified request of the county superintendent of the county in which such an unusual increase exists, the State Superintendent of Public Instruction, at district expense, shall require a supplemental scholastic census to be taken of the district involved. In the event that the census herein authorized shows a substantial increase in scholastic population, the State Superintendent of Public Instruction may approve a supplemental census roll, adding the names of additional eligible scholastics to the rolls of the districts. Said supplement of the scholastic census roll shall be considered a part of the original census as if it were taken in the last preceding month of March of the school year and the scholastic apportionment shall be paid in accordance with said scholastic population. Provided further that such supplemental census shall be taken not later than March 15 of any fiscal year, and shall include only such scholastics that are enrolled and are in actual attendance; provided that for the year 1940-1941 said supplemental census will be permitted until April 22, and no adjustment in scholastic apportionment in a district entitled thereto shall be in an amount more than that necessary for the additional expenditures needed to care for the needs of such districts and which shall be approved by the State Department of Education."

It is our opinion that the phrase "at district expense" refers only to the expense connected with the taking of the supplemental census by the district, and does not authorize the State Superintendent to collect any fee or charge to take care of any additional expense incurred by the census division of the department of education.

The Appropriation Bill for the Executive and Administrative Departments of the State Government passed by the Forty-eighth Legislature contains an appropriation of \$20,840 for the School Census Division of the Department of Education for each of the years of the biennium 1943-1945. See General and Special Laws, Acts of 48th Legislature.

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Following this appropriation and as a part of the Act is Section (15)b of the General Provisions, which reads in part as follows:

"The appropriations herein provided are to be construed as the maximum sums to be appropriated to and for the several purposes named herein, and the amounts are intended to cover, and shall cover the entire cost of the respective items and the same shall not be supplemented from any other sources; and, except as otherwise provided, no other expenditures shall be made, nor shall any other obligations be incurred by any department of this State. . . ." See Vernon's Texas Session Law Service, 1943, No. 5, page 1025.

This provision against supplementing the appropriations is broad enough, in our opinion, to prohibit the State Department of Education from charging the school districts a fee of 30¢ or 35¢ per pupil or any other amount to supplement the appropriation made by the Legislature for the Census Division of the Department. We realize that the work in the Census Division is increased by the passage of the act authorizing the taking of a supplemental census, but the Legislature did not see fit to make an additional appropriation to pay such additional expense, nor did it authorize the department to collect same from the respective Districts.

If the phrase "at district expense" authorized the State Department to collect these fees from the districts (as claimed by members of the Department of Education) they would constitute public moneys and should be deposited in the State Treasury and not in an Austin bank. It is our opinion that the collection of the fees is unauthorized by any law and that the State has no interest in the fund thus created, hence same should not be deposited in the State Treasury, but should be returned to the respective districts from which it was collected. See Daniel vs. Richereek 146 S. W. (2d) 206.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

C. F. Gibson
C. F. Gibson
Assistant

APPROVED
OPINION
COMMITTEE
BY *J.M.*
CHAIRMAN
Tom Miller
ATTORNEY GENERAL OF TEXAS

CFC:ned

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J.D.